



Paper No. 8

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COPY MAILED**SEP 09 2003****OFFICE OF PETITIONS**

In re Application of
Johnston, et al.
Application No. 09/768,115
Filed: January 23, 2001
Attorney Docket No. 38830/253270
For: MICROBIOLOGICAL WATER FILTER

DECISION GRANTING
PETITION

This is a decision on the petition filed August 15, 2003 (certificate of mailing date August 13, 2003), to accord the above-identified application a filing date of January 23, 2001.

On January 23, 2001, the application was deposited.

On May 15, 2001, the Office of Initial Patent Examination mailed a Notice stating that drawings were missing and that a filing date would be accorded upon receipt of the missing items. Petitioner submitted one sheet of drawings on January 22, 2002 (certificate of mailing date November 15, 2001). Because January 22, 2002 was the first date that drawings were present in the Office, the Office accorded a filing date of January 22, 2002 to the application. It is noted that petitioner simply filed the sheet of drawings without alleging that a drawing had already been filed or had been incorporated by reference. On June 2, 2003 (certificate of mailing date May 28, 2003), petitioner filed a Request for Corrected Filing Date, enclosing a copy of the Express Mail label used in the initial filing and a date stamped postcard return receipt that lists January 23, 2001 as the date of receipt of the items on the postcard. OIPE mailed a response to the Request for Corrected Filing Receipt on June 16, 2003. The June 16, 2003 correspondence stated that the filing date accorded to the application is the date the application met the filing date requirements of 37 CFR 1.53(b) or (c) and informed petitioner that a petition under 37 CFR 1.10, 37 CFR 1.53, or 37 CFR 1.82 was required in order request a change in the filing date.

In response, the present petition alleges that even if the drawings were inadvertently omitted from the initial filing on January 23, 2001, the application was not incomplete because the Utility Patent Application Transmittal sheet, filed January 23, 2001, incorporated by reference the entire disclosure of the parent application no 09/382,278. The petition states that the drawings in the parent and continuation are identical.

The Office allows an applicant to rely upon an incorporation by reference of a parent application when a portion of the child application has been inadvertently omitted.

Based on the incorporation by reference, it appears that the drawings were present in the Office on January 23, 2001, albeit in the file of another application, i.e., application No. 09/382,278. Therefore, on petition, the application may be accorded the requested filing date of January 23, 2001.

In view of the above, the petition is **granted**. The copy of the drawings submitted on January 22, 2002 will be used for examination purposes.¹

The petition fee of \$130 will not be refunded since the petition was required to accord the application the requested filing date.

The Application is being returned to the Office of Initial Patent Examination for further processing with a filing date of January 23, 2001.

Telephone inquiries should be directed to the undersigned at (703) 308-6712.

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¹ The Office assumes that the drawings are a true and exact copy of the drawings submitted in the parent application. If this is not the case, then petitioner must notify the Office. Of course, the primary examiner is expected to compare the instant drawings to the disclosure of the parent application in order to verify that the drawings are, in fact, parts of the disclosure of the prior application.